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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/614,339

07/08/2003

Clement Robertson

60707-1360

7869

24504

7590

10/15/2008

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EXAMINER

KANG, SUK JIN

ART UNIT

PAPER NUMBER

2419

MAIL DATE

DELIVERY MODE

10/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/614,339	<b>Applicant(s)</b> ROBERTSON, CLEMENT	
	<b>Examiner</b> SUK JIN KANG	<b>Art Unit</b> 2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,7-12,18-23 and 29-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7-12,18-23 and 29-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 12, and 23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6 and 16 of U.S. Patent No. 7,298,758 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application claims 1, 12 and 23 merely broaden the scope of the patented claims 6 and 16.

Consider claims 1, 12, and 23 of the application, Patent '758 discloses a method and system for optimizing cell available (CLAV) status polling of a plurality of physical interface addresses (claim 1 of Patent '758, "a method for optimizing cell available (CLAV) status polling"), the method comprising the steps of:

polling a plurality of PHY addresses to determine CLAV status (claim 1 of Patent '758, "polling the first and second associated set of PHY address to determine a CLAV status for each PHY address");

receiving the CLAV status for each one of the plurality of PHY addresses (claim 1 of Patent '758, "...determine a CLAV status of each PHY address..." and "determining whether each PHY address...requires polling", thus in determining the CLAV status of the PHY address the actual CLAV status would presumably be known and received);

determining whether the CLAV status could change for each PHY address, wherein the CLAV status that could change comprises both an inactive CLAV status and a completed cell transfer (claim 1 of Patent '758, "...determine a CLAV status of

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each PHY address..." and "determining whether each PHY address...requires polling", thus in determining a CLAV status of the PHY address the actual CLAV status, whether inactivity, cell transfer completion, or status change, would presumably be known and determined); and

re-polling each of the PHY addresses having a CLAV status that could change while avoiding re-polling of PHY addresses having an active CLAV status (claim 6 of Patent '758, "PHY addresses with an active CLAV status that have not been serviced are not re-polled wherein bandwidth is conserved").

It would have been obvious to one of ordinary skill in the art to incorporate not re-polling physical addresses with active CLAV status in order to efficiently manage bandwidth as stated by claims 6 and 16 of the patent. See MPEP 804.01.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1, 12, and 23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. Any response to this Office Action should be **faxed to** (571) 273-8300 **or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Hand-delivered responses** should be brought to

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

5. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Suk Jin Kang whose telephone number is (571) 270-1771. The examiner can normally be reached on Monday - Friday 8:00-5:00 EST.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Chirag Shah can be reached on (571) 272-3144. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

*/Suk Jin Kang/*

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*Examiner, Art Unit 2619*

October 9, 2008

/Chirag G Shah/

Supervisory Patent Examiner, Art Unit 2419